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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,140	02/28/2002	Kaoru Hatanaka	0505-0943P	5061
2292	7590	07/08/2004	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH			ZANELLI, MICHAEL J	
PO BOX 747			ART UNIT	
FALLS CHURCH, VA 22040-0747			PAPER NUMBER	
3661				

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/084,140	HATANAKA ET AL.	
	Examiner	Art Unit	MJ
	Michael J. Zanelli	3661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 April 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 4,6,7,10,11 and 15-22 is/are allowed.
- 6) Claim(s) 1-3,5,9 and 14 is/are rejected.
- 7) Claim(s) 8,12 and 13 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>1/28/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____ .

DETAILED ACTION

1. This is responsive to the amendment filed 4/29/04. Claims 1-22 are pending.
2. The IDS filed 1/28/04 has been considered.
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 5, 9 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Kosuge et al. (EP 0926059A2).

A. As per claims 1, 5, 9 and 14, Kosuge discloses a motor-assisted bicycle which includes a control unit for determining an assist ratio based on a comparison of a current running environment with a reference running environment such that the difference between the current and reference values are minimized (Abs.; [0059]). The current running environment is based in part on detecting operating parameters of the bicycle whereby running resistance and road gradient are taken into account [0023, 0029]. The reference running environment may be specified as zero running resistance [0031].

5. Claims 1-3, 9 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Ooshima et al. (6,439,065).

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A. As per claims 1, 9 and 14, Ooshima discloses a control unit for a motor-assisted bicycle. A micro-computer controls an assist ratio based on the characteristic curves shown in Fig. 3 (col. 8, lines 48-54) which relate variations of driving forces and running resistance caused by speed in a variety of gradients. Means are provided for detecting the current operating characteristics of the bicycle such that the running resistance coincides with the drive force (i.e., flat road running) (col. 6, lines 1-52).

B. As per claims 2 and 3, as above wherein the drive force assistance is increased at low speeds to accelerate the bicycle (Fig. 3; col. 6, lines 17-46).

6. Claims 4, 6, 7, 10, 11 and 15-22 are allowed.

7. Claims 8, 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. **REMARKS**

A. The claims as amended overcome the previous rejections. However, the IDS filed 1/28/04 cites a reference which is deemed to show the features set forth in claims 1, 5, 9 and 14. An updated search also turned up the patent to Ooshima which is also deemed to be highly relevant as noted above.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Zanelli whose telephone number is (703) 305-9756. The examiner can normally be reached on Monday-Thursday 5:30 AM - 4:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas G. Black can be reached on (703) 305-8233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/mjz



MICHAEL J. ZANELLI
PRIMARY EXAMINER